

SERVED: March 5, 1997

NTSB Order No. EA-4527

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of February, 1997

_____)	
BARRY L. VALENTINE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket NA-11
v.)	
)	
ERROL VAN EATON,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the initial decision issued by Administrative Law Judge William E. Fowler on September 13, 1996.¹ The law judge dismissed respondent's petition for review of the Administrator's denial of his application for an airline transport pilot (ATP) certificate. We grant the appeal and remand for a decision on the merits.

By opinion and order issued March 20, 1995, we affirmed an

¹A copy of the initial decision is attached.

order of the Administrator revoking respondent's airman certificate. Administrator v. Van Eaton, NTSB Order No. EA-4435 (1995). Respondent's appeal of that decision to the Ninth Circuit Court of Appeals is pending. On May 13, 1996, more than 1 year after he surrendered his certificate to the FAA pursuant to our March 1995 order, respondent applied to the FAA for an equivalent certificate. There is no question of, and the Administrator does not here dispute, respondent's right to do so. The FAA denied his request, and respondent followed with a petition to this Board for review of that decision.

In his decision, the law judge ruled that he had no authority to review the Administrator's action, because doing so, he believed, would interfere with the Ninth Circuit's review of our March 1995 order and would ignore the findings of that order that respondent lacked the good moral character required of an ATP holder. As acknowledged by the Administrator, however, the law judge's understanding is incorrect. Having waited a year from the date he surrendered his certificate, respondent was entitled to seek a new one (see 49 U.S.C. 44703(c); 49 C.F.R. 821.26(b)), and is entitled to review of this new action by the Administrator regardless of the status of his appeal. Our review would not ignore our prior ruling; indeed, review can be expected to take into account our prior decision and evaluate both the evidence the Administrator presents to support his decision declining to issue respondent a new certificate and whatever evidence respondent offers in rebuttal. As the Administrator

notes, the issue before us will be whether respondent presently has the required good moral character to be the holder of an ATP certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. This case is remanded to the law judge for a decision consistent with this opinion.²

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

²The number of the proceeding shall also be modified accordingly.